

ESTTA Tracking number: **ESTTA447773**

Filing date: **12/21/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	RemedyMD, Inc.
Granted to Date of previous extension	01/04/2012
Address	9350 South 150 East Suite 850 Sandy, UT 84070 UNITED STATES
Attorney information	Kenneth W. Jennings, Jr. ColterJennings 333 S 520 W Suite 110 Lindon, UT 84042 UNITED STATES ken@colterjennings.com Phone:801-932-6164

Applicant Information

Application No	85003997	Publication date	09/06/2011
Opposition Filing Date	12/21/2011	Opposition Period Ends	01/04/2012
Applicant	MediZine, LLC 500 Fifth Avenue, Suite 1900 New York, NY 10110 UNITED STATES		

Goods/Services Affected by Opposition

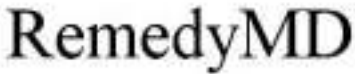
Class 016. First Use: 2009/12/01 First Use In Commerce: 2009/12/01 All goods and services in the class are opposed, namely: Newsletters in the field of medical and health subjects and consumer health education
Class 035. First Use: 2009/12/01 First Use In Commerce: 2009/12/01 All goods and services in the class are opposed, namely: Advertising, marketing and promotional services in the field of health, namely, promoting the health-related products or services of others

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3022094	Application Date	06/07/2004
Registration Date	11/29/2005	Foreign Priority Date	NONE

Word Mark	REMEDYMD
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2004/06/04 First Use In Commerce: 2004/06/04 Database management software for use in the health care industry which can be customized to meet the specifications of a particular medical specialty or a physician's practice and is used to track patient health outcomes and control the organization, storage, retrieval, security, and integrity of medical records

Attachments	78430805#TMSN.jpeg (1 page)(bytes) RemedyMD Notice of Opposition.pdf (8 pages)(167658 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kenneth W. Jennings, Jr./
Name	Kenneth W. Jennings, Jr.
Date	12/21/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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RemedyMD, Inc.)	
)	
v.)	
)	
MediZine, LLC)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

In the matter of the application for registration of:

Applicant's Mark: REMEDYMD

Applicant's Goods: Newsletters in the field of medical and health subjects and
 consumer health education.

Applicant's Services: Advertising, marketing and promotional services in the field
 of health, namely, promoting the health-related products or
 services of others.

Serial No.: 85003997

International Classes: 16, 35

Extended Deadline for filing

Notice of Opposition: January 4, 2012

RemedyMD, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 9350 South 150 East - Suite 850, Sandy, UT 84070, believes it will be damaged by registration on the Principal

Register of the mark shown in Application Serial No. 85003997 and hereby opposes registration of the above-identified application on the following grounds:

1. Opposer is now and for many years has been engaged in the promotion, advertising and sale of goods and services ("Opposer's Goods and Services"), including data management software and services for use in the health care industry; software and services for tracking patient health outcomes; and other applications and services relating to the foregoing.

2. Opposer is the owner of U.S. Trademark Registration No. 3,022,094, for "database management software for use in the health care industry which can be customized to meet the specifications of a particular medical specialty or a physician's practice and is used to track patient health outcomes and control the organization, storage, retrieval, security, and integrity of medical records" registered November 29, 2005 (herein the "'094 Registration"). The '094 Registration is valid, subsisting, and exclusively owned by Opposer.

3. The '094 Registration is incontestable within the meaning of Section 15 of the Lanham Act, Opposer having filed a Combined Declaration of Use and Incontestability under Sections 8 and 15 on January 6, 2011 and having received a Notice of Acceptance and Acknowledgement of the Sections 8 & 15 Declaration.

4. On or about May 5, 2003, Opposer adopted the trade name REMEDYMD to represent Opposer's business (Opposer's Trade Name"). Opposer has continued to use Opposer's Trade Name since at least May 5, 2003 and still uses Opposer's Trade Name. On or about May 5, 2003, Opposer's principles filed Articles of Incorporation

with the state of Delaware Department of State, Division of Corporations, File Number 3654676 under the entity name RemedyMD, Inc. Opposer was granted a DBA license for Opposer's Trade Name by the Utah Department of Commerce, Entity No. 5757055-0143.

5. At least as early as September 26, 2005, Opposer adopted and began using the mark REMEDYMD (the "REMEDYMD Mark") in connection with Opposer's Goods and Services. Opposer has continuously used the REMEDYMD Mark in connection with Opposer's Goods and Services in interstate commerce since that time. Opposer used and uses the REMEDYMD Mark on business cards, marketing materials, and websites and in other ways customary in the trade including branding of Opposer's software products and data services.

6. Opposer has continuously and extensively advertised and promoted the REMEDYMD Mark in connection with the sale and offer for sale of Opposer's Goods and Services. As a result of this extensive sales and advertising, the REMEDYMD Mark has become well known to and favorably received in the health care information industry and by the general consuming public as being associated with Opposer's Goods and Services and with Opposer. Opposer has thus developed and now possesses significant service mark, trademark and trade name rights in and to the REMEDYMD Mark and the REMEDYMD trade name. These rights constitute a valuable business asset of Opposer.

7. On information and belief, on April 1, 2010, MediZine LLC ("MediZine"), applied to register the term REMEDYMD for "Newsletters in the field of medical and

health subjects and consumer health education” in International Class 16 and for “Advertising, marketing and promotional services in the field of health, namely, promoting the health-related products or services of others” in International Class 35, claiming use of the mark in commerce as early as December 1, 2009, as set forth in Application Serial No. 85003997.

8. On information and belief, on or about September 2010, Applicant changed its name to, or was otherwise acquired by, Remedy Health Media, LLC. The website www.medizne.com redirects immediately to www.remedyhealthmedia.com. To Applicant's knowledge, this acquisition or change of name has not been recorded in the United States Patent and Trademark Office, and thus this opposition is being filed in the name of Applicant.

9. On information and belief, Applicant disseminates advertising in which it represents, contrary to fact, that REMEDYMD is a registered trademark of Remedy Health Media, LLC as shown in the attached Web Advertisement that is linked directly to the website at www.remedyhealthmedia.com.

10. Opposer has been using the REMEDYMD Mark and the REMEDYMD trade name since well prior to the alleged date of first use of Applicant's REMEDYMD mark and also since well prior to the date on which Applicant filed Application Serial No. 85003997. As a result, as between Opposer's Mark and Applicant's Mark, Opposer's Mark and Opposer's Trade Name have priority.

11. Applicant's alleged REMEDYMD mark is identical to Opposer's REMEDYMD mark in spelling and in common pronunciation. Applicant commonly uses the mark represented in uppercase and lowercase characters as "RemedyMD" in a matter identical to the common representation used by Opposer.

12. On information and belief, Applicant's trade channels are similar to the established trade channels, and likely-to-continue trade channels of Opposer. Consumers in such trade channels recognize Opposer as the supplier of Opposer's Goods and Services in connection with the REMEDYMD Mark. Such purchasers would likely assume that Applicant's Services offered under Applicant's Mark originated with Opposer.

13. Opposer has built a valuable goodwill in the REMEDYMD Mark used in connection with Opposer's Goods and Services. If Applicant is permitted to register and use the term REMEDYMD in connection with the services set forth in Application Serial No. 85003997, confusion in the trade would likely result. Purchasers familiar with Opposer's Goods and Services offered under the REMEDYMD Mark would believe that Applicant's services offered under the REMEDYMD term are, contrary to fact, associated with, endorsed by or in some way related to Opposer, or actually are the services of Opposer. Any fault or defect in connection with services offered by Applicant would reflect upon and seriously injure the reputation that has been established for Opposer's Goods and Services. Moreover, purchasers familiar with the REMEDYMD Mark are likely to confuse such mark with Applicant's REMEDYMD mark and might purchase or use Applicant's services in the belief that they are purchasing or

using Opposer's Goods and Services. This confusion would result in a loss of sales to Opposer and damage Opposer's income and reputation.

14. Opposer's use of the REMEDYMD Mark in the United States continuously since prior to Applicant creates common law rights in Opposer, which rights are superior to any rights Applicant may have developed.

15. Applicant is not now and never was entitled to registration on the Principal Register of the alleged mark depicted in Application Serial No. 85003997 for the goods and services specified therein.

16. Applicant's goods and services are related to Opposer's Goods and Services and Applicant's REMEDYMD mark is confusingly similar to Opposer's REMEDYMD Mark. Applicant's REMEDYMD mark, when used in association with Applicant's goods and services, is likely to cause confusion, mistake or deception with Opposer's Goods and Services. In addition, Opposer has been using Opposer's Trade Name since long before Applicant's alleged date of first use of the REMEDYMD mark. Thus, the registration of Applicant's REMEDYMD mark is precluded under Section 2(d) of the Trademark Act. Moreover, registration of Applicant's REMEDYMD mark would create rights inconsistent with Opposer's right to use its REMEDYMD Mark and trade name.

17. If Applicant is granted the registration herein opposed, Applicant would have prima facie exclusive rights to Applicant's REMEDYMD mark and all confusingly similar marks, thus placing Applicant in a position to damage and injure Opposer and Opposer's customers.

18. Opposer would be damaged by issuance of Applicant's Application Serial No. 85003997.

WHEREFORE, Opposer requests that registration of Applicant's alleged mark, Application Serial No.85003997, be denied and that this Opposition be sustained. Please recognize J. Harrison Colter, member of the Bar of the State of Utah, and Kenneth W. Jennings, Jr. Member of the Bar of the State of Washington as Opposer's attorneys in connection with this opposition proceeding. All correspondence should be directed to Kenneth W. Jennings, Jr.

Dated: December 21, 2011

Respectfully submitted,

/Kenneth W. Jennings, Jr./
Kenneth W. Jennings, Jr.
COLTERJENNINGS
333 South 520 West
Lindon, Utah 84042
Attorneys for Applicant
REMEDYMD, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2011 a true and correct copy of the foregoing NOTICE OF OPPOSITION is being served upon counsel for Applicant by mailing a copy thereof to Applicant's counsel at:

Darren B. Cohen
Reed Smith LLP
599 Lexington Ave Fl 28
New York, NY 10022-7684

/Kenneth W. Jennings, Jr./
Kenneth W. Jennings, Jr.



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